Gas Light and Coke Co. v. *Hamilton City*, 146 U. S. 258. The decision in the main case that it is not state action until held valid by the highest court of the state is therefore unsupported by the authorities, and is due possibly to the court's failure to note that the distinction is made between authorized and unauthorized action and not between lawful and unlawful action under the state constitution. Generally one attacking unconstitutional state legislation need not first pursue his remedy in the state courts; although where a carrier complains of rates fixed by a state commission he must exhaust the remedies provided by the statute before applying to the federal courts. See 22 HARV. L. REV. 368. The main case in requiring a similar procedure in the case of municipal ordinances reaches a desirable result but is wholly unsupported by the decisions.

FEDERAL COURTS — JURISDICTION AND POWERS IN GENERAL — ORIGINAL JURISDICTION WHEN STATE IS A PARTY. — The Constitution of the United States gives the Supreme Court original jurisdiction in cases in which a state is a party. Oklahoma brought an original bill in this court to enjoin the defendant railroad from charging certain alleged excessive freight rates in Oklahoma. The railroad demurred. *Held*, that the Supreme Court here has no original jurisdiction. *State of Oklahoma* v. *Atchison, Topeka & Santa Fé Ry. Co.*, 31 Sup. Ct. Rep. 434.

The State of Oklahoma brought an original bill in the Supreme Court to enjoin numerous common carriers from shipping intoxicating liquors into Oklahoma in violation of her constitution and laws. *Held*, that the Supreme Court here has no original jurisdiction. *State of Oklahoma* v. *Gulf, Colorado & Santa Fé Ry. Co.*, 31 Sup. Ct. Rep. 437.

These cases illustrate the unsuccessful attempt of a state to employ the Supreme Court, by virtue of the broad language of the Original Jurisdiction clause of the Constitution, as a tribunal of first resort in the enforcement of its laws. No property right of the state is here sought to be protected; the real parties in interest are certain citizens, and the primary purpose is to shield them against a violation of the state laws by the defendants. A state cannot thus ask relief when it seeks chiefly to vindicate the wrongs of individuals or to enforce its laws against wrongdoers generally. *Louisiana* v. *Texas*, 176 U. S. 1, 19, 22. The second case is rested on the additional ground that the state is in substance attempting to enforce a local penal law in the courts of another jurisdiction. Such an action cannot be maintained. *Wisconsin* v. *Pelican Ins. Co.*, 127 U. S. 265. It is clear that the practical result of a different determination of the principal cases would be to overwhelm the Supreme Court with similar litigation.

HUSBAND AND WIFE — MUTUAL RIGHTS, DUTIES, AND LIABILITIES — HUSBAND'S POWER TO DISPOSE OF COMMUNITY PROPERTY AS A VESTED RIGHT. — Under the law of New Mexico a husband had the uncontrolled power to dispose of community property. A statute declared that no future conveyance of such property should be valid unless the wife joined in the deed. It was contended that the law could not constitutionally apply to community property already acquired, as that would deprive the husband of property without due process of law. *Held*, that such construction is constitutional. *Arnett* v. *Reade*, 31 Sup. Ct. Rep. 425. See NOTES, p. 652.

INSURANCE — CONSTRUCTION AND OPERATION OF CONDITIONS — "NET VALUE" OF POLICY. — A Missouri statute provided that no life insurance policy should be forfeited for the non-payment of premiums, but that three-fourths of its net value at the time of default should be used to purchase temporary insurance. The insured died three years after default. *Held*, that the

temporary insurance, based on the net value of the original policy, had expired before his death. *Rose* v. *Franklin Life Ins. Co.*, 132 S. W. 613 (Mo.). See NOTES, p. 662.

INSURANCE — MUTUAL BENEFIT INSURANCE — LIMITATION OF ACTION. — The defendant, a mutual benefit life insurance society, promised to pay a certain sum after proof of the death of the insured while a member. The contract did not specify who was to give the proof, but required notice of death from the local to the central lodge. Action to recover the amount promised was brought fourteen and one-half years after the disappearance of the insured, eight years after the termination of his membership, and five months after proof of death was given the central by the local lodge. The latter had contemporaneous knowledge of both the disappearance and the continued absence of the insured. *Held*, that the action is not barred by the Statute of Limitations (six years). *Kelly* v. *Ancient Order of Hibernians Ins. Fund*, 129 N. W. 846 (Minn.).

In such contracts the beneficiary is not the one to perform the condition of proof of death. *Anderson* v. *Supreme Council*, 135 N. Y. 107. *Cf. Doggett* v. *United Order of the Golden Cross*, 126 N. C. 477. Therefore the local lodge must be the one to perform it, and this means that the society itself, through its agent, is to perform the condition. *Patterson* v. *United Artisans*, 43 Or. 333. Even if the condition be not performed, the beneficiary can recover the whole amount promised. *Murphy* v. *Independent Order*, 77 Miss. 830. This recovery can be had on either of two theories. The plaintiff may sue for breach of the express promise to pay, non-performance of the condition being excused by the promisor's prevention of its performance. *Jones* v. *Walker*, 13 B. Mon. (Ky.) 163; *Cape Fear Navigation Co.* v. *Wilcox*, 7 Jones (N. C.) 481. In the principal case the beneficiary had such an excuse, and therefore the right of action, more than six years before suit. Or the plaintiff may recover, in the second place, for the breach of the defendant's promise, implied in fact, to perform the condition. *Cf.* 24 HARV. L. REV. 404; *Ford* v. *Tiley*, 6 B. & C. 325. Delay in the performance of this subsidiary promise will amount in time to a repudiation of the entire contract, giving rise to an action for damages as for a complete breach. See WILLISTON, SALES, §§ 500, 500 (a), 500 (b). After such a repudiation no other right of action can accrue on the contract. *Cf. Clark* v. *Marsiglia*, 1 Den. (N. Y.) 317; *Gibbons* v. *Bente*, 51 Minn. 499. But *cf. Roebling's Sons' Co.* v. *Lock Stitch Fence Co.*, 130 Ill. 660. In the principal case such a repudiation must have occurred more than six years before suit. On either theory, therefore, the action should have been held to be outlawed.

INSURANCE — RIGHTS OF INSURER — SUBROGATION TO RIGHTS OF INSURED WHEN LOSS IS PAID WITHOUT LEGAL LIABILITY. — Owing to the defendant's fault, its vessel was obliged to deviate from its course to get coal. During the deviations it ran aground, and subsequently a lien was asserted against the cargo for salvage. The plaintiff, the insurer of the cargo, paid the salvage, though there was no provision in the policy for liability in case of deviation. The plaintiff claimed to be subrogated to the rights of the owner of the cargo, and sued the defendant for the amount paid for salvage. *Held*, that it can recover. *British & Foreign Marine Ins. Co.* v. *Kilgour Steamship Co., Limited*, 184 Fed. 174 (Dist. Ct., S. D. N. Y.).

The contention of the defendant was that the plaintiff, not being liable on account of the deviation, paid as a mere volunteer and therefore could not recover. One who officiously discharges the obligation of another cannot recover from the original obligor. *Stokes* v. *Lewis*, 1 T. R. 20. The difficulty arises, as in the principal case, in determining whether or not the payment was voluntary or officious. When a surety, without liability to do so, dis-